S.B. CR.MISC.BAIL APPL.NO.7177/2007.

Solomon Smith
Vs.
State

Date of order : 1/11/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Anil Kumar for the petitioner.
Shri Harshvardhan Nandvana PP for the State.
Shri Neeraj Tiwari for the complainant.

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Heard learned counsel for the petitioner, learned Public Prosecutor for the State as well as learned counsel for the complainant and perused the relevant documents placed before me.

Learned counsel for the petitioner has argued that the allegation against the petitioner is that he leased out the property of the Church whereas he had no authority to do. Learned counsel for the petitioner has argued that petitioner is a Moderator (Priest) of the Church having been recognized by the Church of Scotland. The property in dispute was in fact owned by the Indian Canadian Presbyterian Commission of which the petitioner was successor and, therefore, he was competent to lease out the same. Reference was made to the deed of enrollment dated 19/12/1893, constitution of the mission dated 7/4/1927, order dated 22/9/1938 passed by the Court of Small Causes, Bombay, order dated 7/2/1972 passed by the Collector (Stamps) Ajmer,

authorization letter dated 27/12/2004 executed in favour of the petitioner, letter dated 1/6/2007 written by the Canada High Commission and the judgment of the Indore Bench of Madhya Pradesh, Church of Scotland Rick Session Act 1899, Mission's Pen Card etc. which were produced before the Court of Sessions are referred to in para 4 of the rejection order. It was argued that petitioner merely leased the subject property for five years and has not sold it out for good. It is still in the possession of the United Church of Northern India at whose instance, complainant-P.D. Theodor lodged report against the petitioner. It was argued that petitioner is an old aged person of 70 years and also a patient of diabetes. Petitioner having been arrested, is in jail for more than a month now. The investigation is almost complete and his further detention in jail is not required for any other purposes. Though, offences u/Ss.467, 468, 471 and 474 IPC were also alleged to have been committed by the petitioner but no offence of forgery in fact is borne out even from the alleged facts. All that has been alleged is that the petitioner has leased out the subject property even though he had no authority to do so. The only substantive offence which is alleged against the petitioner is u/S.420 IPC which is triable by the

court of Magistrate of Ist Class. Learned counsel for the petitioner has further argued that co-accused Gopal Choudhary in whose favour the lease deed was executed, has already been enlarged on bail by the co-ordinate Bench of this Court in SB Cr.Misc.Bail Appl.No.3674/07 vide order dated 13/6/2007.

On the other hand, the learned Public Prosecutor as well as learned counsel for the complainant have both opposed the bail application and argued that the property in dispute was never owned by the Indian Canadian Presbyterian Mission but in fact it was the property of United Presbyterian Church Scotland which transferred it to Rajputana Presbyterian Mission in 1898. The Rajputana Presbyterian Mission is a constituent of United Church of Northern India since 1924 and even the Collector Ajmer in his order dated 24/12/1959 acknowledged such property to be of Rajputana Presbyterian Mission which vide Deed dated 16/3/1971 transferred the same to United Church of Northern India which is now managing the same. It was argued that petitioner was neither concerned with the United Church of Northern India nor is he authorised by Indian Canadian Presbyterian Mission to deal with the subject property. Reference was made to certain documents mentioned in para 5 of the order of the court below. It was argued that

petitioner has committed a serious offence, therefore he should not be released on bail pending trial.

Without expressing any opinion on the merits of the case but taking into consideration the aforesaid arguments and particularly the fact that petitioner is an aged person of 70 years and the dispute is about the lease executed by him for five years in favour of co-accused Gopal Choudhary who has already been extended the benefit of bail by the order of the co-ordinate Bench of this Court, I am inclined to enlarged the petitioner on bail pending trial.

In the result, this bail application u/S.439 Cr.P.C. is allowed and it is directed that petitioner Solomon Smith S/o F.Masih shall be released on bail in F.I.R. No.139/2007 P.S. Civil Line Ajmer for offences under Sections 420, 453, 467, 468, 471, 474 and 120B IPC subject to his furnishing a personal bond in the sum of Rs.50,000/- together with two sureties in the sum of Rs.25,000/- each to the satisfaction of the trial Court for his appearance before that court on all dates of hearing until conclusion of the trial.

(MOHAMMAD RAFIQ), J.

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